

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

March 15, 2004

CALL TO PODIUM:**RESPONSIBLE STAFF:**

Tony Tomasello

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
X	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	March 15, 2004
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:

Ordinance to enact new chapter 6B of the City Code entitled, "Gaithersburg Arts and Monuments Funding Corporation, Inc.," so as to authorize the creation of a fundraising organization for the City of Gaithersburg to heighten awareness of and seek support for arts and revitalization initiatives within the City of Gaithersburg and incorporation thereof.

SUPPORTING BACKGROUND:

The Gaithersburg Arts and Monuments Funding Corporation, Inc. is being established to heighten awareness of and seek support for revitalization and arts initiatives within the City of Gaithersburg.

The corporation's activities will include:

- Identifying, organizing, promoting and managing fundraising activities for City approved projects/programs
- Establishing donor contacts
- Accounting for donated funds
- Creating and distributing promotional/ informational material

The Gaithersburg Arts and Monuments Funding Corporation members will work closely with the following established City committees: Art in Public Places, Gaithersburg Cultural Arts Advisory Committee and the Olde Towne Advisory Committee.

DESIRED OUTCOME:

Vote to introduce ordinance and notify public that a public hearing is scheduled for April 19, 2004.

ORDINANCE NO. _____

AN ORDINANCE TO ENACT NEW CHAPTER 6B OF THE CITY CODE, ENTITLED "GAITHERSBURG ARTS AND MONUMENTS FUNDING CORPORATION, INC.," SO AS TO AUTHORIZE THE CREATION OF A FUNDRAISING ORGANIZATION FOR THE CITY OF GAITHERSBURG TO HEIGHTEN AWARENESS OF AND SEEK SUPPORT FOR ARTS AND REVITALIZATION INITIATIVES WITHIN THE CITY OF GAITHERSBURG AND INCORPORATION THEREOF

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that new Chapter 6B of the City Code, titled "Gaithersburg Arts and Monuments Funding Corporation, Inc.," is hereby enacted to read as follows:

Chapter 6B

Gaithersburg Arts and Monuments Funding Corporation, Inc.

- § 6B-1. Definitions
- § 6B-2. Findings; General Intent
- § 6B-3. Gaithersburg Arts and Monuments Funding Corporation, Inc.; General, Creation and Purposes/Services
- § 6B-4. Funding
- § 6B-5. Board of Directors of Corporation; Employees; Other Organizational Matters
- § 6B-6. Gaithersburg Arts and Monuments Funding Corporation, Inc. – Powers
- § 6B-7. Annual Report and Accounting
- § 6B-8. Termination of Gaithersburg Arts and Monuments Funding Corporation, Inc.; Dissolution

Sec. 6B-1. Definitions.

For purposes of this chapter, the following terms have the meanings indicated:

- (a) *Board of directors* means the board of directors of Gaithersburg Arts and Monuments Funding Corporation, Inc., as created and specified herein.
- (b) *City* means the City of Gaithersburg, Maryland.
- (c) *City Manager* means the manager of the City of Gaithersburg, Maryland or his authorized designee.
- (d) *Corporation* means, the Gaithersburg Arts and Monuments Funding Corporation, Inc., created under section 6B-3.

- (e) *Department* means a City department, principal office, or other office that the City Council designates to perform functions under this chapter. Department does not include the Gaithersburg Arts and Monuments Funding Corporation, Inc.

Sec. 6B-2. Findings; General Intent.

- (a) The Gaithersburg Arts and Monuments Funding Corporation, Inc. is being established to heighten awareness of and provide support for revitalization and arts initiatives, projects and programs within the City of Gaithersburg. The City's revitalization program, as set forth in the Strategic Action and Downtown Plan, seeks to establish the Olde Towne Central Business (OTCBD) district as the civic, social and cultural heart of the City. The organization's broad-based focus serves to benefit arts programs, projects and initiatives throughout the City. The activities of the organization will include:
 - (1) Identifying, organizing, promoting and managing fundraising events for City approved projects/programs;
 - (2) Establishing donor contacts;
 - (3) Accounting for donated funds;
 - (4) Creating and distributing promotional/informational material.
- (b) The corporation hereinafter created will, in cooperation with and with the support of the City, provide an administrative, regulatory and financial framework through which to accomplish these goals.

Sec. 6B-3. Gaithersburg Arts and Monuments Funding Corporation, Inc.; General, Creation and Purposes/Services

- (a) **General.** The Gaithersburg Arts and Monuments Funding Corporation, Inc. may be created under this section for the benefit of Gaithersburg arts and revitalization programs, projects and initiatives. The corporation created under this section is a public instrumentality of the City. The corporation is not within the executive or legislative branches of the City government, is separate and distinct from the City, and is an independent entity. To the extent not inconsistent with this section or Article 23A of the Maryland Code, the corporation may exercise all powers and is subject to all requirements applicable to nonstock corporations under the Corporations & Associations Article of the Maryland Code. The corporation performs tasks of benefit to the government and the public generally.

(b) Creation

- (1) The Gaithersburg Arts and Monuments Funding Corporation, Inc. shall hereafter be created and incorporated, as provided by applicable laws, to undertake those functions and duties, and exercise that authority as provided by this chapter, and the corporation charter and bylaws for that area identified in section 24-160F.3 of this Code.
- (2) The corporation shall be empowered to enter into written agreements to effect the general goals and intent of this chapter, but is not empowered to encumber any assets or revenue of the City.
- (3) The corporation may be created by the adoption of a resolution by the City Council. The public must be given at least thirty (30) days to comment on the proposed articles of incorporation and bylaws before the council adopts the resolution. The resolution must approve articles of incorporation that state the:
 - (A) Name of the corporation;
 - (B) Names, addresses and terms of office of the first directors of the corporation;
 - (C) Location of the principal office of the corporation;
 - (D) Purposes for which the corporation is formed; and
 - (E) Powers of the corporation, subject to the restrictions or limitations on the powers of the corporation in this section and in Article 23A and the Corporations & Associations Article of the Maryland Code.
- (4) The resolution adopted under paragraph (1) must also approve proposed bylaws for the corporation that include provisions required under section 6B-5.
- (5) The City Manager or any other person designated in the resolution adopted under paragraph (1) must execute and file the articles of incorporation for recording with the State Department of Assessments and Taxation. When the articles of incorporation are accepted for recording by the Department of Assessments and Taxation, the corporation becomes a body corporate, lawfully and properly created and authorized to exercise its powers.

- (6) The City Council may amend the articles of incorporation by resolution. Any amendment must be filed and recorded with the State Department of Assessments and Taxation. A copy of the articles of incorporation and any amendment must be filed with the City Manager.
 - (7) Amended articles of incorporation must be filed and recorded with the State Department of Assessments and Taxation. A copy of the amended articles of incorporation must be filed with the City Manger.
- (c) Purposes/Services
- (1) Identifying, organizing, promoting and managing fundraising events for City approved projects/programs;
 - (2) Establishing donor contacts;
 - (3) Accounting for donated funds;
 - (4) Creating and distributing promotional/informational material.
 - (5) Such other services as may be detailed in the charter of the corporation.

Sec. 6B-4. Funding.

- (a) The corporation may solicit the following sources of funding:
 - (1) Gifts, grants, donations and bequests;
 - (2) Any federal or state funded, insured or guaranteed grant;
 - (3) Membership fees or annual dues charged to voluntary members of the corporation; and
 - (4) Any other funding mechanism authorized by law.
- (b) Funds or in-kind services received from the City of Gaithersburg can only be used for administrative activities.
- (c) Funding restrictions.
 - (1) The corporation may not pledge or encumber the assets or general revenues of the City.

- (2) Subject to the limitations and restrictions set forth in this chapter, and notwithstanding any other law, ordinance, charter, or bylaw to the contrary, the corporation may borrow funds for authorized purposes only if approved by resolution of the City Council.
- (d) Use of funds. The corporation must use funds obtained under this section only:
 - (1) For the purposes of the corporation, as set forth in section 6B-3 and as may be restricted in section 6B-4(b) and (c), of this chapter.

Sec. 6B-5. Board of directors of corporation; employees; other organizational matters.

- (a) Appointment and confirmation of board of directors. Except as otherwise provided in the resolution creating or amending the charter of the corporation, the board of directors of the corporation has no less than six (6) members. Members are appointed by the mayor and confirmed by the City Council. The mayor must appoint the members of the board of directors so that:
 - (1) One (1) member is, at the time of their appointment, a member of the Olde Towne Advisory Committee and shall serve a three (3) year term;
 - (2) One (1) member is, at the time of their appointment, a member of the Arts in Public Places Committee and shall serve a three (3) year term;
 - (3) One (1) member is, at the time of their appointment, a member of the Gaithersburg Cultural Arts Advisory Committee and shall serve a three (3) year term;
 - (4) Two (2) members are At-Large members capable of representing arts and revitalization interests and each shall serve a two (2) year term;
 - (5) One or more are ex-officio, non-voting members. The Mayor may serve as an ex-officio or designate one or more members of the City Council to serve in that capacity.
- (b) Removal. The mayor, with the approval of the City Council, may remove a member of the board of directors for malfeasance, misfeasance, or nonfeasance or other reason specified in the bylaws of the corporation.

(c) Duties. The board of directors shall direct all aspects of the program, management and finances of the corporation.

(d) Compensation; relation to City retirement system.

(1) A member of the board of directors shall serve without compensation.

(2) Members of the board of directors appointed pursuant to section 6B-5(a)(1), (2), (3) and (4) are not employees, and are not eligible to receive benefits under the City retirement system for services rendered as a board member.

(e) Procedures, attendance and ethics.

(1) The board of directors may establish its own rules of procedure. These rules may be included in the bylaws of the corporation. The board may adopt a rule that allows for removal of a member by the Mayor, upon recommendation of the board, because of failure to attend meetings or other reasons.

(2) Members of the board of directors appointed pursuant to section 6B-5(a)(1), (2), (3), and (4) are not subject to Chapter 7A (Ethics), but must comply with all bylaws pertaining to ethical conduct by the board of directors approved by the City Council under subsection (f) of this section.

(f) Bylaws.

(1) At the organizational meeting of the board of directors, required under Section 2-109 of the Corporations & Associations Article of the Maryland Code, the board must adopt the bylaws approved by the City Council under section 6B-3. Any later proposed amendment to the bylaws must be submitted to the City Council for approval at least sixty (60) days before the board of directors takes final action on the amendment. All bylaws must be filed with the City Manager within five (5) working days of adoption.

(2) The bylaws may contain any provision not inconsistent with law or the articles of incorporation of the corporation to regulate and manage the affairs of the corporation. The bylaws must contain provisions that:

(A) Protect against any conflict of interest or similar impropriety by members of the board of directors or the executive director or any other employees, including self-dealing and collusive practices. This requirement includes a

provision for the disclosure of a financial or similar interest of any person in any matter before the corporation and the establishment of conditions under which that person is disqualified from participating in decisions or other actions in which there is a conflict between the person's official duties and private interests. Appropriate remedies against violation, including removal or termination, must be provided.

- (B) Provide for competitive procurement for goods and services.
 - (C) Provide for surety bonds or similar instruments to protect against misappropriation of funds by directors or employees of the corporation responsible for the handling of corporation funds.
- (g) Committees. The board of directors may be supported by committees, each chaired by a board member, which oversee the management of other functions of the corporation. Membership on committees may be open to persons other than board members.
- (h) City staff assistance. The City Manager may designate City employees to assist the board of directors. Such employees shall not be deemed to be employees of the corporation.
- (i) Executive director; agents and employees. The board of directors may engage an executive director with substantial experience in managing the affairs of the corporation. In lieu of an Executive Director, a City staff member may assume all powers and duties that may be delegated to the Executive Director from time to time within the bylaws. The board may employ, or contract with, other persons to assist in carrying out the corporation's functions. An employee of the corporation is not a City employee under Chapter 17 (Personnel) nor a public employee for purposes of Chapter 7A (Ethics). An employee of the corporation must not participate in or receive benefits from the City retirement system for service as an employee with the corporation.
- (j) Insurance. The corporation must secure reasonable and appropriate insurance for its activities.
- (k) Publicity. The Gaithersburg Arts and Monuments Funding Corporation, Inc. may publicize its activities through newsletters or other media. It may sell advertising in its publications, as well as the sale of souvenirs or other promotions.

Sec. 6B-6. Gaithersburg Arts and Monuments Funding Corporation, Inc. -Powers.

- (a) Powers. To further its statutory purposes, but subject to the limitations in subsection (b) of this section, the corporation may:
 - (1) Acquire, hold and use personal property and other property rights necessary to achieve its purposes, including acquisition by purchase, lease or license;
 - (2) Make contracts, including employment contracts and contracts for goods and services;
 - (3) Sue, and be sued;
 - (4) Accept grants, gifts or other contributions;
 - (5) Establish commercial bank accounts, with any earnings on funds inuring to the corporation; and
 - (6) Take other necessary or convenient actions.
- (b) Limitations. The corporation may not:
 - (1) Pledge the full faith and credit of the City;
 - (2) Issue bonds or notes;
 - (3) Exercise any police or general power of the City, except those expressly authorized by law;
 - (4) exercise the power of eminent domain;
 - (5) Lease any property as tenant for a term of years beyond the date of termination of the corporation.
- (c) Applicability of City procurement policies.
 - (1) The requirements of the City Charter do not apply to procurement by the corporation. The corporation must submit a report to the Mayor and City Council by September 1 of each year, describing achievement of those goals in the prior fiscal year.
 - (2) The corporation should participate in the City cooperative purchasing program to the fullest extent practicable and cost effective.
- (d) City not liable; suits by corporation against City prohibited; styling of suits by or against the corporation; City attorney.

- (1) The City, its officers, employees and agents are not liable, in contract or tort, for any obligation, act or omission of the corporation or its agents or employees. Any contract executed by the corporation must state that the City, its officers, employees and agents are not liable for any obligation of the corporation under the contract.
- (2) The corporation or its employees and contractors may not sue the City as plaintiff.
- (3) A lawsuit brought by or against the corporation must specifically name the corporation.
- (4) The City attorney is the legal advisor to the corporation and must be notified of any legal action by or against the corporation. This paragraph does not prohibit the corporation from hiring additional legal counsel approved by the City attorney.

Sec. 6B-7. Annual Report and Accounting

Annual report. The corporation must maintain its books, accounts and records, and shall file with the Mayor and City Council of Gaithersburg, an annual report at the end of its fiscal year. The Corporation will also, in conjunction with the City's Director of Finance, submit an accounting of all corporation funds and a listing of the location thereof. The time for submission of the annual report and accounting shall be specified by the City Manager. All books and records of the Corporation may be inspected by any director and by any authorized employee or auditor of the City of Gaithersburg at any reasonable time, upon request to the Executive Director.

Sec. 6B-8. Termination of the Gaithersburg Arts and Monuments Funding Corporation, Inc.

- (a) Articles of dissolution must be filed and recorded with the State Department of Assessments and Taxation. A copy of the articles of dissolution must be filed with the City Manager.
- (b) When the corporation terminates, all contracts and services must terminate unless expressly assumed and maintained by the City.
- (c) Dissolution of the corporation is governed by Section 5-208 of the Corporations & Associations Article of the Maryland Code. Subsequent to any restriction on individual donations as agreed to by the board of directors, any assets remaining after all liabilities and obligations of the corporation are satisfied must be distributed to the City government.

- (d) Notwithstanding anything to the contrary contained in this section, the corporation may be terminated at any time after adoption of a resolution by a super-majority of the City Council (i.e., four (4) members) if the corporation has been operated in an ultra vires manner, or in the event of misfeasance, malfeasance or nonfeasance by the board of directors. Termination and dissolution is governed by subsections (c) and (d) of this section.

ADOPTED by the City Council of Gaithersburg this ____ day of _____, 2004.

SIDNEY A. KATZ, MAYOR
and President of the City Council

DELIVERED to the Mayor of the City of Gaithersburg this ____ day of _____, 2004. Approved by the Mayor of the City of Gaithersburg, this ____ day of _____, 2004.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2004, and that the same was approved by the Mayor of the City of Gaithersburg on the ____ day of _____, 2004.

David B. Humpton, City Manager